

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

AGALEAN CLEMONS

Petitioner,

v.

WARDEN CYNTHIA S. WHEELER-  
WHITE and TROY KING,

Respondents.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION NO. 09-0387-CG-N

REPORT AND RECOMMENDATION

This matter has been referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2(c)(4).

This case was transferred to this court from the Middle District of Alabama on June 30, 2009. The undersigned entered an order (doc. 5) on July 2, 2009, requiring petitioner to file her claims on the appropriate form for this district, and either to pay a filing fee of \$5.00 or to complete and file this court's form Motion for Leave to Proceed without Payment of Fees. The order set August 3, 2009, as the deadline for compliance with both parts of that order. The undersigned expressly warned the petitioner "that the failure to comply with this Order within the prescribed time ... will result in a recommendation that the petition be dismissed without prejudice." To date, there is no indication that petitioner has made any effort to comply with the court's order or to contact the court concerning additional time to do so.

Accordingly, the undersigned RECOMMENDS that this action be DISMISSED without prejudice for failing to pay filing fee and for failing to comply with an order of the court.

The attached sheet contains important information regarding objections to the Report and Recommendation.

DONE this the 12<sup>th</sup> day of August, 2009.

/s/ Katherine P. Nelson  
UNITED STATES MAGISTRATE JUDGE

MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS  
AND RESPONSIBILITIES FOLLOWING RECOMMENDATION  
AND FINDINGS CONCERNING NEED FOR TRANSCRIPT

1. Objection. Any party who objects to this supplemental recommendation or anything in it must, within ten days of the date of service of this document, file specific written objections with the clerk of court. Failure to do so will bar a de novo determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the magistrate judge. See 28 U.S.C. § 636(b)(1)(C); Lewis v. Smith, 855 F.2d 736, 738 (11th Cir. 1988). The procedure for challenging the findings and recommendations of the magistrate judge is set out in more detail in SD ALA LR 72.4 (June 1, 1997), which provides, in part, that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed de novo and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge's recommendation cannot be appealed to a Court of Appeals; only the district judge's order or judgment can be appealed.

2. Opposing party's response to the objection. Any opposing party may submit a brief opposing the objection within ten (10) days of being served with a copy of the statement of objection. Fed. R. Civ. P. 72; SD ALA LR 72.4(b).

/s/ Katherine P. Nelson  
UNITED STATES MAGISTRATE JUDGE